

APPEAL NO. 032842  
FILED DECEMBER 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 7, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th quarter from July 9 through October 7, 2003, and that the respondent (self-insured) did not waive the right to contest the claimant's entitlement to SIBs for the 14th quarter. The claimant appealed the adverse determinations. The self-insured responded, urging affirmance.

DECISION

Reversed and rendered.

We deal first with the waiver issue, as our decision on the waiver issue is dispositive of the case.

The hearing officer erred in determining that the self-insured did not waive the right to contest the claimant's entitlement to SIBs for the 14th quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(d) (Rule 130.108(d)) requires a carrier to request a benefit review conference (BRC) within 10 days after the date it receives the Application for [SIBs] (TWCC-52) if it had paid SIBs for the previous quarter. A carrier's failure to do so results in the waiver of its right to contest the claimant's entitlement to SIBs for that quarter. Rule 130.108(e) provides, in relevant part, that if a carrier disputes entitlement to a subsequent quarter and did not pay SIBs during the quarter immediately preceding the disputed quarter, the carrier shall send the determination to the injured employee within 10 days of the date the form was filed with the carrier, and it becomes the injured employee's obligation to dispute the carrier's determination. Rule 130.108(e) does not mention the word waiver.

The claimant argues that the self-insured waived the right to dispute entitlement to SIBs because the self-insured paid the previous quarter of SIBs and it did not request a BRC pursuant to Rule 130.108(d). The record reflects that on June 26, 2003, the claimant filed a TWCC-52 for the 14th quarter and that the self-insured disputed the entitlement to SIBs for the 14th quarter on July 1, 2003. On the date that the self-insured disputed the claimant's entitlement to SIBs for the 14th quarter, the Texas Workers' Compensation Commission had not yet made a determination on the claimant's entitlement to SIBs for the 13th quarter<sup>1</sup>. Under the facts of this case, neither Rule 130.108(d) nor Rule 130.108(e) are exactly on point and dispositive. As noted in

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<sup>1</sup> The hearing officer's Finding of Fact No. 13 that "The self-insured employer did not pay SIBs during the 13th quarter of SIBs." is incorrect. The claimant correctly notes that she prevailed at a CCH that determined that she was entitled to SIBs for the 13th quarter, and that decision was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 032019, decided September 10, 2003. The outcome of the CCH was not known to the parties on the date that the claimant submitted the TWCC-52 for the 14th quarter.

our recent decision in Texas Workers' Compensation Commission Appeal No. 032868-s decided December 11, 2003, "[t]he 1989 Act and rules contain no specific provisions relating to the factual situation where the immediately preceding quarter is actively under dispute at the time the carrier receives the TWCC-52 for the subsequent quarter." We resolved our previously conflicting decisions by holding that the proper approach when the rule does not fit the factual situation is to return to the statutory provision in the 1989 Act. Section 408.147(b) provides:

- (b) If an insurance carrier fails to make a request for a [BRC] within 10 days after the date of the expiration of the impairment income benefit period or within 10 days after receipt of the employee's [TWCC-52], the insurance carrier waives the right to contest entitlement to [SIBs] and the amount of [SIBs] for that period of [SIBs].

Applying Section 408.147, the self-insured was required to request a BRC within 10 days after receipt of the TWCC-52 for the 14th quarter, but did not. The consequence is that the self-insured waived the right to contest entitlement to SIBs for the 14th quarter.

The hearing officer's decision that the self-insured did not waive the right to contest the claimant's entitlement to SIBs for the 14th quarter is reversed and a new decision rendered that the self-insured did waive the right to contest the claimant's entitlement to SIBs for the 14th quarter. Accordingly, the claimant is entitled to SIBs for the 14th quarter.

The evidentiary issue concerning the weight to give the designated doctor's report concerning the claimant's ability to return to work is rendered moot by our decision on the waiver issue, and need not be discussed further.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MANAGER  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge